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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,294	07/10/2006	Kurt Stippler	30051/41862	6847
4743 7590 12/04/2009 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606-6357			EXAMINER LEFT, STEVEN N	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			12/04/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,294

**Applicant(s)**

STIPPLER ET AL.

**Examiner**

STEVEN LEFF

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/20)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 7/10/06, 6/28/06, 5/4/06

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - With respect to claim 1, the phrase “the inner boiler” is rejected as it lacks antecedent basis and thus it is unclear if the inner boiler is the wort copper, with respect to the pipe-bundle inner boiler, or some different inner boiler altogether.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wasmuht et al. (5865093) in view of Lenz et al. (DE 3504500).

Wasmuht et al. teach a method for boiling wort. More specifically Wasmuht et al. teach a wort kettle (fig. 1 ref. 1) comprising an inner boiler which is a piped-bundle inner boiler for heating the inner area of the central pipe such that the wort is boiled

within (col. 3 lines 55-57) without using steam, a pump for pumping the wort in a forced circulation (col. 2 lines 27-35, fig. 1 ref. #4) through a wort distributor arranged above the inner boiler (col. 3 lines 11-13) such that the wort is subsequently pumped into a whirlpool (col. 4 lines 21-23), and subsequently pumped from the whirlpool via the distributor of the kettle (col. 3 lines 28-31) due to the closed circulating circuit (col. 3 lines 28-32). Wasmuht et al is further teaches cooling the wort since the wort distributor would cause cooling of the previously boiled wort since only the inner area of the pipe bundle is heated.

However Wasmuht et al. is silent with respect to teaching a thin-film distributor.

Lenz et al. teach an inner tubular boiler (title), and a thin-film distributor (fig. 1-5 ref. #24) in a wort copper for beer production.

Therefore since both Wasmuht et al. and Lenz et al. teach a method of boiling wort using an inner boiler, and since Wasmuht et al. teaches the claimed method albeit using a different wort distributor above the inner boiler, one of ordinary skill in the art would have been motivated to combine the teachings in order to provide a method which not only delivers the boiled wort to a settling or whirlpool areas as is taught by Wasmuht et al. but which further allows for regulating the pressure within the kettle and subsequently the pump system as is taught by Lenz et al. in addition to providing a constant temperature with respect to the wort as it exits the distributor (pg. 4 par. 5 translation).

Therefore it would have been obvious to one of ordinary skill in the art to teach the use of a thin-film distributor as is taught by Lenz et al. since all the claimed elements were known in the prior art and since combining the two methods, each of which is taught by the prior art to be useful for the same purpose of providing wort to a settling tank or whirlpool, flows logically from their having been individually taught in the prior art (see MPEP 2144.06) in order to further provide the advantage of regulating the pressure within the reservoir and the pump system, thereby providing a uniform heating process in addition to providing a constant temperature with respect to the wort as it exits the distributor as is taught by Wasmuht et al. thus increasing the service life of the tube-type boiler and subsequently increasing the quality of the wort as is further desired by Wasmuht et al. (col. 3 lines 25-29).

It would have further been obvious since MPEP 2144.07 states that the selection of a known process based on its suitability for its intended use supports a prima facie obviousness determination, where in the instant case Lenz et al. teach the annular gap nozzle for regulating the pressure within the kettle and subsequently the pump system in order to provide a constant temperature with respect to the wort as it exits the distributor (pg. 4 par. 5 translation) thereby further increasing the service life of the tube-type boiler and subsequently increasing the quality of the wort as is further desired by Wasmuht et al. (col. 3 lines 25-29).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794

/Steven Leff/  
Examiner, Art Unit 1794